IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

RP.No. 138 of 2007

AGAINST THE JUDGEMENT IN RSA.714/2006 Dated 25/09/2006

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REVIEW PETITIONERS/APPELLANTS

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1. EROKUNNUMMAL RADHAKRISHNAN,
   S/O. APPUKUTTY PANICKER, AGED 43 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

2. EROKUNNUMMAL SARADA,
   D/O.APPUKKUTTY PANICKER, AGED 50 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

3. EROKKUNNUMMAL DEVI,
   D/O.APPUKKUTTY PANICKER, AGED 48 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

4. EROKKUNNUMMAL RAMANI,
   D/O. APPUKKUTTY PANICKER, AGED 45 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

5. EROKKUNNUMMAL GOWRI,
   D/O. APPUKKUTTY PANICKER, AGED 35 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK
   P.O. EKAROOL, KOZHIKODE DISTRICT.

6. EROKKUNNUMMAL BHARGAVI,
   D/O.APPUKKUTTY PANICKER, AGED 32 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

7. EROKKUNNUMMAL MUKUNDAN,
   S/O. APPUKKUTTY PANICKER, AGED 30 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

8. EROKKUNNUMMAL RAMA,
   W/O. PRABHAKARAN, AGED 44 YEARS,
   UNNIKULAM AMSOM DESOM, KOYILANDY TALUK,
   P.O. EKAROOL, KOZHIKODE DISTRICT.

9. EROKKUNNUMMAL KAVITHA,
D/O. PRABHAKARAN, AGED 24 YEARS,
UNNIKULAM AMSOM DESOM, KOYILANDY TALUK
P.O. EKAROOL, KOZHIKODE DISTRICT.

10. UNNIVEETTIL KALA, D/O. PRABHAKARAN,
AGED 19 YEARS, NEAR ACADEMY COLLEGE,
BALUSSERY AMSOM DESOM, KOYILANDY TALUK.

BY ADV. SRI.C.VATHSALAN
SRI.GHOSH YOHANNAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS: APPELLANTS & RESPONDENTS 1 AND 3 TO 5
PLAINTIFFS &

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1. UMMINIKUNNUMMAL SAJINI, W/O. RAJAN,
AGED 37 YEARS, CHIRAKKAL HOUSE,
ELATHUR AMSOM DESOM, P.O.ELATHUR,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

2. UMMINIKUNNUMMAL UNNIKRISHNAN,
S/O.KALYANI, AGED 35 YEARS,
UNNIKULAM AMSOM, POONOOR DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

3. CHETHILAPOYIL LAKSHMI,
D/O. IMBICHI PANICKER, AGED 76 YEARS,
UNNIKULAM AMSOM DESOM, P.O.KAURUMALA,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

4. KIZHAKKAYIL SUKUMARAN, S/O. MALU,
AGED 43 YEARS, MODAKKALLUR AMSOM,
KODUVALOOR DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

5. KIZHAKKAYIL BALAKRISHNAN, S/O. MALU,
AGED 40 YEARS, MODAKKALLUR AMSOM,
KODUVALOOR DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

6. KIZHAKKAYIL SOBHANA, D/O. MALU,
AGED 38 YEARS, MODAKKALLUR AMSOM,
KODUVALOOR DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.

R.P. 138/2007 in R.S.A.714/2006

Dated this 20th day of February, 2007

O R D E R

This is a petition to review the judgment and decree passed in R.S.A.714/2006 dated 25.9.2006 by this Court. Two grounds are urged before me in support of the review petition. The first ground is that Annexure-I certificate dated 19.12.2006 now produced along with the review petition and issued by the Sub Registrar, Births and Deaths, Unnikulam Grama Panchayat, shows that the death of Imbichi Panicker had not been registered in the said Panchayat either in the year 1955 or 1956 or 1957 and if so Ext.A2 death certificate produced by the plaintiff and which was relied on by all the three Courts cannot be treated as a genuine document. The second contention raised is that the suit property had been mortgaged for availing a loan from the Nedungadi bank consequent on which Ext.B6 execution proceedings were initiated and the mortgaged property was redeemed by the fourth defendant, who is the first review petitioner.

2. With regard to first contention raised in support of the review, it is suffice to observe that the review petitioner had not taken any steps in any of the Courts below or even before this Court to offset the presumption available to Ext.A2 which is a public document. Even Annexure-I certificate only shows that on a search conducted, it is not seen that the death of Imbichi Panicker had been registered in the Panchayat in the years 1955, 1956 and 1957. This is a document which the petitioners could have and ought to have produced before the trial Court itself. Even if any such attempt was done and the document were to be produced before the first appellate Court, by virtue of the rigour under Order 41, Rule 27 C.P.C., this document would not have been admitted as a piece of evidence. The position is still worse if the document were to be produced before this Court which could interfere with the concurrent decrees only if a substantial question of law was made out. Hence, I do not consider the said ground as sufficient to review the judgment and decree passed by this Court.

3. As for the second contention, it is admitted that

the same was not urged before this Court, while disposing of the second appeal. The petitioner have no case that such a ground was urged before this Court. The settled legal position is that the point which is not urged before this Court and which the Court had no occasion to consider, will be deemed to have been abandoned. Hence the said contention also cannot be a ground for reviewing the judgment.

This petition is accordingly dismissed.

V.RAMKUMAR,
JUDGE

mrcs